IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15657 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

BHIKHABHAI G.PATEL - Respondent(s)

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Appearance :

MRS FALGUNI D PATEL for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

RULE SERVED BY DS for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 29/06/2005

ORAL JUDGMENT

1. Though served nobody appears on behalf of the respondent. Even this Court has passed the order on 19th April, 2005 that though the other side is served with the notice of Rule, nobody has remained present on behalf of the other side and in order to give one more chance, the matter was adjourned to 4th May, 2005. Even thereafter, the matter is adjourned thrice but nobody appears on behalf of the respondent and

thus, the respondent has chosen to remain absence and hence, this matter is being disposed of finally even in absence of the respondent.

2. In this petition under Articles 226 and 227 of Constitution of India, the petitioner GSRTC has challenged the legality and validity of the judgment and award dated 29th April, 2004 passed by the Industrial Tribunal passed in Reference (IT) No.319 / 1997, by which, the Tribunal has partly allowed the reference quashing and setting aside the punishment imposed by the disciplinary authority and substituting the same by another punishment.

3. The respondent was serving as Driver and he was absent without leave for the period between 25.7.1995 to 24.8.95 and therefore, departmental inquiry was initiated against him. After giving opportunity to the respondent workman, the disciplinary authority by order dated 1.7.96 imposed punishment of placing him to the minimum of the pay scale. Being aggrieved and dissatisfied with the same, the respondent workman raised the industrial dispute which was referred to the Industrial Tribunal, Ahmedabad for its adjudication which was numbered as Reference (IT) No.319 of 1997. The respondent workman did not challenge the legality and validity of the departmental inquiry, however,

challenged the findings. After holding that charge of the absentism from the duty without leave is proved against the respondent workman. However, considering the provisions of Section-11-A of the Industrial Disputes Act and holding that the punishment imposed is disproportionate to the charges leveled against him and by placing the respondent workman to the minimum of the pay scale would be a great economic loss to him and therefore, while partly allowing the reference by quashing and setting aside the order of punishment imposed by the disciplinary authority dated 1.3.1996 substituting the punishment of withholding of three increments without future effect and not to pay any difference on the basis of substitution of the aforesaid punishment till the respondent workman has retired and to pay retirement benefits to the respondent workman accordingly. Being aggrieved and dissatisfied with the aforesaid judgment and award dated 29th April, 2004 passed by the Industrial Tribunal passed in Reference (IT) No.319/1997 in substituting the punishment exercising the powers under Section-11-A of the I.D.Act, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Ms.Falguni Patel, learned advocate on behalf of the the petitioner has vehemently submitted that as the punishment which was challenged

before the Industrial Tribunal was not of dismissal or discharge, the Tribunal has no jurisdiction to interfere with the punishment and substitute the punishment while exercising the powers under Section-11-A of the I.D.Act and in support of her submission, she has relied upon the recent order passed by the Division Bench of this Court dated 29th March, 2005 passed in Letters Patent Appeal No.1199 / 2002 in Special Civil Application No. 11081 of 2002. She has also further submitted that even otherwise, on merits also in view of the finding of the Industrial Tribunal proving the charge against the respondent workman and the charge of absentism without leave having been proved, the Tribunal was not justified in quashing and setting aside the order of punishment imposed by the disciplinary authority and ought not to have substituted the same. It is also submitted that in fact, with a view to see that there is no economic death of the workman, the authority has imposed punishment of placing the respondent workman to the minimum of the pay scale and has not dismissed from service and therefore, the Industrial Tribunal ought not to have interfered with the order of punishment imposed by the disciplinary authority.

5. It is an admitted position that the respondent workman has not challenged the legality and validity of the departmental inquiry. On

appreciation of the evidence, the Industrial Tribunal has held that charge of absentism without leave has been proved against the respondent workman. However, the Tribunal has interfered with the order of punishment only on the ground that there will be a major economic loss to the respondent workman and interfered with the order of punishment imposed by the disciplinary authority by exercising the powers under Section-11-A of the I.D.Act. It is required to be noted that there was no order of dismissal or discharge passed by the disciplinary authority and order which was passed by the disciplinary authority was placing the respondent workman to the minimum of the pay scale. As held by the Division Bench of this Court (Coram : G.S.Singhvi and A.S.Dave, JJ.) in its judgment and order passed in L.P.A. No.1199 of 2002, the labour court etc cannot exercise the powers under Section-11-A of the Act in the cases, in which, the employer imposed a penalty on the workman otherwise than by way of discharge or dismissal and exercise of powers by the labour court etc. interfering with the punishment of reduction to the basic of his pay scale imposed by the Corporation, it is held that the Industrial Court has exceeded its jurisdiction. Considering the order passed by the Division Bench of this Court in aforesaid Letters Patent Appeal and also considering Section-11-A of the I.D.Act, the Industrial Tribunal in case on hands has exceeded in its jurisdiction in quashing

and setting aside the order of punishment imposed by the disciplinary authority and substituting the punishment exercising the powers under Section-11-A of the I.D.Act. Even otherwise, on the facts and circumstances of the case, more particularly, in view of the finding of the Industrial Tribunal, holding that the charges leveled against the respondent workman is proved, Industrial Tribunal ought not to have interfered with the order of punishment imposed by the disciplinary authority. Once the charges are proved, it is ultimately for the disciplinary authority to impose punishment and only in case where a punishment imposed is s chokingly disproportionate then then in that case the Industrial Tribunal may interfere with the order of punishment.

6. For the reasons stated hereinabove, the petition succeeds. The judgment and award passed by the Industrial Tribunal dated 29.4.2004 passed in Reference (IT) No.319 of 1997 is hereby quashed and set aside.

Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R.Shah, J.]

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